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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Plumas)

ALFREDO M. AGUILERA et al., Plaintiffs and Appellants, v. JOAN LYONS et al., Defendants; DAVID C. NORTON, Respondent.	C083052 (Super. Ct. No. 22149)

Plaintiffs commenced this action for partition and to quiet title more than 18 years ago. The real property that is the subject of this action has now been sold, and the trial court has issued an amended order on the court-appointed referee's motion for the distribution of the sale proceeds.

In their second appeal in this litigation, plaintiffs appeal from this latest order. However, they raise no arguments about the substance of that order. Instead, they assert that the order is void because (1) certain underlying orders and judgments from 2003,

2011, and 2012 are purportedly void, improperly entered on several defendants' default, and (2) the trial court failed to rule on defendant Joan Lyons's motion to vacate.

We conclude that plaintiffs are precluded from attacking the underlying orders and judgments because they were the parties who sought those orders and judgments and they were not aggrieved by them, and because, even if they were aggrieved, they did not timely appeal from any of those orders or judgments. We further conclude that plaintiffs lack standing to raise arguments concerning the treatment of Lyons's motion.

We dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

This action for partition and to quiet title was commenced on April 27, 2001. According to the complaint, plaintiffs and defendants were all co-owners of certain unimproved real property in Plumas County. Plaintiffs alleged that, together, they owned 88/144 of the subject property.

On May 27, 2003, the trial court entered a default judgment against a number of named defendants, including Lyons, as requested by plaintiffs. Plaintiffs filed an application for interlocutory judgment[1] pursuant to Code of Civil Procedure section 872.720.[2] Among other things, plaintiffs asserted that all parties had been served and that "[d]efaults have been taken against all defendants except" two named defendants who filed the only answer, and who joined in the application. After a bench trial, on August 21, 2003, the court filed an interlocutory judgment for partition, for the appointment of a referee, and to quiet title.

Subdivision of the property proved impracticable and, in an interlocutory judgment in 2011, the trial court directed the referee to proceed with partition by sale of

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[1] The copy of this application appearing in the clerk's transcript is not signed or dated.

[2] Further undesignated statutory references are to the Code of Civil Procedure.

the entire property. On April 24, 2012, the trial court granted the referee's motion to confirm the sale of the subject real property.[3]

On January 26, 2016, Lyons filed a motion to "vacate all orders [and] judgments in the action, at variance with the complaint upon which default was entered, as void as a matter of law."[4] (Capitalization omitted.) Lyons asserted that the second amended interlocutory judgment entered May 23, 2011, was void on its face, and that every judgment entered from the date of entry of default was void and must be set aside, because (1) the scope of relief had changed, and (2) the interlocutory judgment erroneously treated the subject real property as two parcels rather than one.[5] The referee opposed Lyons's motion. According to a minute order in the clerk's transcript on appeal, dated May 2, 2016, Lyons's motion was argued at a hearing that day, submitted, and denied at the hearing.[6]

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[3] Plaintiffs appealed from the trial court's orders confirming the sale and denying their motion to remove the referee. In an unpublished opinion, we affirmed the court's orders. (*Aguilera v. Lyons* (Oct. 7, 2015, C071061) 2015 Cal.App. Unpub. LEXIS 7258; 2015 WL 5839779.)

[4] It appears that this motion was filed again on April 6, 2016.

[5] The subject real property, bisected by a county road, consists either of two adjacent parcels or one undivided parcel. The property bears two Assessor Parcel Numbers. Whether the property consists of one or two parcels is immaterial to this appeal.

[6] The proceedings were not reported. Plaintiffs maintain that Lyons's motion was never ruled upon, and assert that the document in the clerk's transcript is not an order, is not signed, has no date or file stamp, and was not served with notice of entry. In his motion for the distribution of the sale proceeds, the referee stated that Lyons's motion was denied on or about May 2, 2016. In a declaration, the attorney for the referee represented that, on May 2, 2016, Judge Warriner "ruled from the bench" on Lyons's motion "with a verbal 'Motion Denied,' " as memorialized by the minute order. Counsel for plaintiffs, who was present during the May 2, 2016 proceedings, claims there "is no order in existence at all," but does not say what the court did on May 2, 2016, only stating that there "is not even a transcript of the proceeding in the record." Ultimately, as we will

On or about April 28, 2016, the real property was sold to the Soper Company for $465,000.

On July 29, 2016, the referee filed a motion for an order for the distribution of the proceeds of the sale of the subject real property and to surcharge the distributions to plaintiffs and Lyons based on the expenses incurred in defending against their actions. Plaintiffs opposed the motion, asserting, among other things, that the motion could not be heard until Lyons's motion was ruled upon.

The trial court granted the referee's motion for the distribution of sale proceeds. Plaintiffs appeal from the amended order on the referee's motion for distribution filed August 29, 2016.

DISCUSSION

Plaintiffs raise a number of contentions on appeal, but, as the referee asserts, plaintiffs' contentions do not relate to matters addressed in the order appealed from. Plaintiffs are precluded from attacking the underlying orders and judgments because they requested those orders and judgments and they were not aggrieved by them, and because, even if they were aggrieved, they did not timely appeal from any of those orders or judgments. Further, plaintiffs lack standing to raise arguments concerning Lyons's motion. Accordingly, we shall dismiss the appeal.

I. Entry of Order or Judgment on Request or Consent

Plaintiffs filed a request for entry of a default judgment against defaulting defendants, and the trial court entered the default as requested on May 27, 2003. Plaintiffs further requested the subsequent 2003 interlocutory judgment. To the extent plaintiffs would seek relief from either of these judgments, in addition to the other circumstances precluding such relief discussed *post*, they are barred because they

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discuss *post*, whether the trial court ruled on Lyons's motion does not affect our determination or the disposition on this appeal.

requested the relief granted by the court. (See *Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1210 (*Diaz*).) As the *Diaz* court stated, a " 'party is not aggrieved by a consent judgment, or one which he has requested the court to decree.' [Citation.] Thus, '[i]t is an elementary and fundamental rule of appellate procedure that a judgment or order will not be disturbed on an appeal prosecuted by a party who consented to it.' " (*Ibid*.) Because plaintiffs requested these judgments, they consented to them, and, having consented to them, they cannot claim to be aggrieved by them. (*Ibid*.)

II. Standing to Challenge the Prior Orders and Judgments

Plaintiffs assert that the order appealed from is facially void because it is based on a void default judgment. Plaintiffs assert that "the distribution order is still based on a default judgment and a series of orders and judgments that are all void as a matter of law as determined facially from the judgment roll of the action." Plaintiffs assert that all orders and judgments entered after the entry of the default judgment are void on their face under section 764.010 because any default judgment in a quiet title action is void on its face and may be set aside at any time on petition by any injured party.

Section 902 provides, in pertinent part: "Any party aggrieved may appeal in the cases prescribed in this title." The test of whether a litigant has the right to appeal " 'is twofold—one must be *both a party of record to the action and aggrieved* to have standing to appeal.' [Citation.] Thus, notwithstanding an appealable judgment or order, '[a]n appeal may be taken only by a party who has standing to appeal. [Citation.] This rule is jurisdictional. [Citation.]' [Citation.] It cannot be waived. [Citation.] [¶] ' "One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment." [Citation.] Conversely, "A party who is not aggrieved by an order or judgment has no standing to attack it on appeal." [Citation.]' [Citation.] [¶] Injurious effect *on another party* is insufficient to give rise to appellate standing. A 'party cannot assert error that injuriously affected only nonappealing coparties.' [Citation.] This is 'no

mere technicality, but is grounded in the most basic notion of why courts entertain civil appeals. We are here to provide relief for appellants who have been wronged by trial court error. Our resources are limited and thus are not brought to bear when appellants have suffered no wrong but instead seek to advance the interests of others who have not themselves complained.' " (*Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62, 67-68 (*Gregory D.*).)

Plaintiffs appeal from the August 29, 2016, amended order on referee's motion for distribution. In their briefing, they repeatedly insist that they are appealing from this amended order. And yet, plaintiffs raise not a single issue with that order, beyond asserting that it is void due to what came before it. It is possible that plaintiffs could claim to be aggrieved by the order appealed from, assuming they raised claims actually relevant to or directly addressing any aspect of that amended order. They do not.

Inasmuch as plaintiffs advance claims relative to the default judgment and the interlocutory judgments, which in each case granted them the relief they sought, they cannot claim to be aggrieved parties whose rights or interests were injuriously affected thereby. (*Gregory D., supra*, 214 Cal.App.4th at pp. 67-68.) Plaintiffs assert that there are 18 or more defendants in this action, and further assert that the default judgments against them are void, and "[e]very one of these 18 or more title-holder defendants has the right, as a matter of law, to set aside the default judgment and sale on this quiet title action, perpetually, without any statute of limitations impediments." Even if this were true, a determination we need not make here, plaintiffs are not defendants and cannot assert a right to set aside a default judgment entered at their request, in their favor, and by which they were not injuriously affected.[7]

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[7] In light of our determination that plaintiffs lack standing to advance any of the claims they advance in their briefing on appeal, we do not reach the underlying merits of their contentions concerning the propriety of the entry of the default judgment and whether the

III. Plaintiffs' Forfeiture of Contentions in Connection with Prior Judgments

For the reasons set forth in parts I. and II. of the Discussion, *ante*, plaintiffs are not aggrieved parties eligible to assert claims of error relative to the default judgment and the interlocutory judgments entered thereupon. We further note here, as we did in our prior unpublished opinion in this action, that, even if they were aggrieved, to the extent plaintiffs are unhappy with anything that happened in connection with the three interlocutory judgments in this action, which were appealable judgments (§ 904.1, subd. (a)(9)), they forfeited their contentions by failing to file timely appeals from those judgments (Cal. Rules of Court, rule 8.104 [appeal must be filed by earliest of 60 days after service of notice of entry of judgment or 180 days after entry of judgment]; § 906 ["The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken"].)

IV. Plaintiffs Lack Standing to Address Treatment of Lyons's Motion

A. Additional Background and the Parties' Contentions

In what appears to be the crux of plaintiffs' appeal, they assert that "the basis for setting aside" the order appealed from "is the fact that one of the defendants, Joan Lyons, had filed a motion to vacate the sale, and the Court ignored it, never issuing any order upon her motion." Lyons moved to vacate all orders and judgments in the action upon which default was entered as void as a matter of law.[8] Plaintiffs claim the trial court did

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trial court complied with section 764.010 and the procedures discussed in *Harbour Vista, LLC v. HSBC Mortgage Services, Inc.* (2011) 201 Cal.App.4th 1496, 1502.

[8] As noted, Lyons's motion was grounded on a claim that the orders and judgments were at variance with the complaint and the interlocutory judgment treated the subject real property as two parcels rather than one. She did not assert any contention pursuant to section 764.010 or cite that section. Plaintiffs filed a request for judicial notice, requesting that we take judicial notice of a complaint filed by Lyons in an action to quiet title and as a collateral attack on the judgment pursuant to section 760.010 et seq. against, among others, plaintiffs and the purchaser of the subject real property. The complaint was filed on December 21, 2017, nearly a year and a half after the order appealed from

not rule on this motion, but instead "ignored" it. The referee, on the other hand, asserts that the trial court denied the motion and points to a minute order in the clerk's transcript reflecting the court's ruling. (See fn. 6, *ante*.)

In this appeal, the referee asserts that plaintiffs lack standing under section 902 to advance their claims concerning the treatment of Lyons's motion because plaintiffs' rights and interests were not injuriously affected by the denial of Lyons's motion. The referee notes that Lyons has not appealed, and further asserts that plaintiffs cannot pursue an appeal concerning Lyons's motion on her behalf. The referee argues that plaintiffs did not appeal from, or attempt to appeal from, the denial of Lyons's motion, and the order denying Lyons's motion is not reviewable as an intermediate ruling under section 906 because it was itself an appealable order from which plaintiffs did not appeal.[9] Thus, the referee asserts in his respondent's brief on appeal: "[p]laintiffs make no effort to show how they were aggrieved by the court's denial of . . . Lyons's motion to set aside the

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here. Plaintiffs' request for judicial notice was deferred pending calendaring and assignment of the panel. Given that plaintiffs lack standing, we conclude that Lyons's complaint in that action is not relevant to this appeal, and thus, we deny plaintiffs' request for judicial notice. (See *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [matter to be judicially noticed must be relevant to material issue].)

[9] Section 906 provides: "Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party, including, on any appeal from the judgment, any order on motion for a new trial, and may affirm, reverse or modify any judgment or order appealed from and may direct the proper judgment or order to be entered, and may, if necessary or proper, direct a new trial or further proceedings to be had. The respondent, or party in whose favor the judgment was given, may, without appealing from such judgment, request the reviewing court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken. *The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken*." (Italics added.)

interlocutory judgments that they themselves requested. The appeal should therefore be dismissed because [p]laintiffs lack standing under . . . section 902." We agree that plaintiffs lack standing to challenge the trial court's action or inaction relative to Lyons's motion to vacate.

B. Analysis

Plaintiffs lack standing to assert that the trial court erred in either failing to rule on the motion or in denying it. In either case, plaintiffs were not " ' "injuriously affected by the judgment," ' " and therefore they have " ' "no standing to attack it on appeal." ' " (*Gregory D., supra*, 214 Cal.App.4th at p. 67.) "Injurious effect *on another party*," such as Lyons "is insufficient to give rise to appellate standing. A 'party cannot assert error that injuriously affected only nonappealing coparties.' " (*Id*. at pp. 67-68.) Plaintiffs thus lack standing to challenge on appeal the trial court's treatment of Lyons's motion.

Plaintiffs invoke section 473. Subdivision (d) of section 473 provides: "*The court may*, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, *on motion of either party after notice to the other party, set aside any void judgment or order*." (Italics added.) Lyons made such a motion, and whether the trial court acted on it or not, plaintiffs lack standing to attack the trial court's actions on Lyons's motion.

DISPOSITION

The appeal is dismissed.[10] The referee shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

/s/
MURRAY, J.

We concur:

/s/
HULL, Acting P. J.

/s/
DUARTE, J.

[10] The referee filed a separate motion to dismiss plaintiffs' appeal for lack of jurisdiction. Plaintiffs moved to strike the referee's motion and requested the imposition of sanctions on the referee. Each of these matters was deferred pending calendaring and assignment of the panel. Plaintiffs in their reply brief further requested that we issue an order to show cause why the referee and his attorneys should not be sanctioned "for their intentional and material misrepresentation to the Court." In light of our determinations and conclusions, we deny the referee's separate motion to dismiss plaintiffs' appeal for lack of jurisdiction as moot. We also deny plaintiffs' motion to strike the request in their motion for the imposition of sanctions, and their request in their reply brief for an order to show cause on the issue of sanctions. As is clear from this decision, we do not agree with plaintiffs' characterization of the referee's position and actions. Indeed, plaintiffs' appeal, for which they lack standing and attack orders and judgments they themselves asked the trial court to make, is arguably frivolous.